

IN THE BARNSLEY COUNTY COURT

The County Court
Westgate
Barnsley

13th December 2013

Before

DEPUTY DISTRICT JUDGE OBHI

PARKING EYE LIMITED
(Claimant)

-v-

PAUL D. HEGGIE
(Defendant)

PROCEEDINGS

APPEARANCES:

For the Claimant:	MISS SHARMA
For the Defendant:	IN PERSON

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3 PROCEEDINGS

4 JUDGE OBHI: I have before me Miss Sharma who represents the claimant in this case and
5 Mr. Heggie, you appear in person.

6 MR. HEGGIE: Yes

7 JUDGE OBHI: Miss Sharma, it is your case.

8 MISS SHARMA: It is madam.

9 JUDGE OBHI: So I turn to you.

10 MISS SHARMA: Thank you ma'am. Can I confirm that you have all the paperwork.

11 JUDGE OBHI: Yes, I do, yes.

12 MISS SHARMA: Before I understand that the defendant has filed a lot of without prejudice
13 documentation.

14 JUDGE OBHI: No, I do not have anything from him apart from a letter.

15 MR. HEGGIE: There was some correspondence, e-mail correspondence between me. I sent
16 it to both sides which I was told to do. I had numbered them.

17 JUDGE OBHI: I do not see.....

18 MR. HEGGIE: It does not really matter.

19 JUDGE OBHI: Let me have a look. It may be on the correspondence clip. I do not seem to
20 have it.

21 MISS SHARMA: Well, then clearly that is in the best of the parties because obviously it
22 would not be appropriate for the Court to be aware of any such.....

23 JUDGE OBHI: All right.

24 MISS SHARMA: Thank you ma'am. It is quite a straightforward position of the claimant.
25 The defendant parked his vehicle in a car park that is for - the management of that which is owned by
26 Parking Eye. As is the usual case when there is a breach of the terms and conditions as there was
27 here, in as much as there was no documentary evidence on the car to show that parking had been paid
28 for, or the correct documentation, the automatic recognition system operates and a letter was then
29 sent out as per the witness statement. I do not know if you need me to take you through.

30 JUDGE OBHI: I have read the papers in this case, Miss Sharma, and what I am struggling

1 with is the loss that was suffered by your client. Do you want to address me on that?

2 MISS SHARMA: Yes, Ma'am. (Inaudible) as with £100, presumably, is that what the issue
3 is.

4 Well, at the outset if I can just give a little more background in this situation. Obviously
5 anybody entering into a car park is entitled to pay for parking their vehicle. If they did not, for
6 example, if it was a supermarket car park and non-shoppers came then it would be a huge detriment
7 to any land owner.

8 JUDGE OBHI: What was the detriment in this case?

9 MISS SHARMA: Well, in this case there is the situation is the whole running costs of this
10 car park of the breaches and if I could turn you to the Exhibit 9 which will make clear, as I say, I can
11 tell you - that charge £100 is a pre-estimate of loss. It has been supported by case law. It is not a
12 penalty and there was commercial justification for businesses to use their land in the best way that
13 they can. In the instances of land owners, the best use in that regard would be to allow Parking Eye
14 to manage a car park on that for which the land owner will receive a fee. Obviously running a car
15 park does have an extremely large amount of costs. It is a commercial venture.

16 JUDGE OBHI: Sorry to stop you, Miss Sharma, I understand all of that, but it seems to me
17 that in this case, it is an unusual case in that what the defendant is saying is that he actually paid but
18 he had entered the wrong details of the car and so the details on the slip, on the card that he put on his
19 car were wrong but he had actually the sum. Is that right? That is your defence?

20 MR. HEGGIE: Yes, I mean basically I use the car park regularly. I have two cars, right. I
21 knew that I had paid because she had gone to the shops and I went and put the money in. Came back,
22 left within time and that - as far as I understood it, I do not keep parking tickets, right, so then all this
23 correspondence ensued which the only thing I could think of, initially was that there some sort of
24 take or malfunction, whatever, and they assured me, I do not know, I mean I am not a technical
25 person, they assured me - the only thing that I could come up with was that I had inadvertently put
26 the other number which, so I wrote to them, and after prolonged, protracted correspondence where
27 they would not let me have the details they eventually agreed that they would look.

28 Now, I have not made it up, it is my other car number, yes, and they accepted that and then
29 wrote back and said, "Yes, you did pay, you left within time but you did not put the right number in
30 and therefore" - now to me I do not see why - I do not see that there has been any loss to them at all.
31 They have had my parking.....

32 JUDGE OBHI: Well, that is the position and that is why I am (inaudible) that that is the
33 thing that troubles me. There is no loss in this, so whilst I accept your argument for that, the costs of
34 running car parks and the right of landowners to charge for the use of their land and so on, what I am
35 struggling with in this case is the loss.

36 MISS SHARMA: If I can assist you further. As regards the actual timing it was actually
37 four minutes over.

38 JUDGE OBHI: Well, they said in correspondence, have not they, that they would not
39 normally charge.....

1 MISS SHARMA: No. But the difficulty in this instance is that Mr. Heggie is quite right. If
2 he has - he did ultimately find out that it was his other car park(*sic*) number the reason that it took
3 time was because I think Mr. Heggie asked for a full list of every car parked in the car park which
4 the.....

5 JUDGE OBHI: I do not think, Miss Sharma, you can prove loss in this case.

6 MISS SHARMA: Your Honour, the difficulty is, they had it to issue, because Mr. Heggie
7 ignored all the notices that he had. If he had engaged with the Appeals process at that stage he would
8 have come to the Appeals process and said, "Look, I paid the car parking".

9 JUDGE OBHI: But that is punishing him, is not it, for not doing things that he should have
10 done in the process.

11 MISS SHARMA: Well, no, because I would respectfully submit that he forced the claim
12 because they heard nothing, they did not even know that there was potentially a reasonable reason
13 why the car park had not been paid for. They were never given the opportunity to look into it. Had
14 they been given the opportunity, had Mr. Heggie had got in touch at that point pre-issue then their
15 loss is.....

16 JUDGE OBHI: But once they knew.....

17 MISS SHARMA:having to now issue because they have my attendance, they have lost
18 the cost of bringing the claim to Court which I am quite sure that he would recognise would not be
19 £25 or the £50 that is sought, it is a lot more. If Mr. Heggie had, at the outset, when he received
20 three different letters from them saying, you know, "You have this, there is an appeals process,
21 please, you know, take it up, help us". And he chose to absolutely ignore it and force their hand into
22 issuing this claim. So I would say that actually they have lost in this regard because they have had to
23 pay Court fees, create a bundle, instruct myself and go to all that expense when there was a logical
24 reason and that is fully accepted. The difficulty is is that reason was never brought to their attention
25 until some significant time after. I mean even at the point of the defence it was never mentioned that
26 there could have been another car number plate, the defence only raises issues about the functioning
27 of the car park machinery. Mr. Heggie never says "Oh I have two cars", so nobody was ever allowed
28 to even consider that and when Mr. Heggie asked for all the number plates he even then did not say
29 what the position was and at that stage Parking Eye said, "Please, you give us the number plate and
30 we will clarify because obviously we cannot for Data Protection reasons give you a list of number
31 plates" so that is their position that the - I have been instructed in this morning that had Mr. Heggie
32 have made any of these representations prior to the claim form being issued, it is more than likely, if
33 not completely to have been expected that his appeal would have been completely successful and to
34 be perfectly honest I would respectfully submit that Mr. Heggie has brought this upon himself by
35 taking no notice whatsoever of the correspondence that he says he and admits that he received.

36 MR. HEGGIE: I do not deny I received the correspondence. Basically, I had no idea that I
37 had entered the wrong - it was the only thing I could think of after all this. Basically, the reason I did
38 not respond is because there is a website where there is umpteen claims by this company,
39 unwarranted claims where people have parked and been supposedly penalised and I looked at it and
40 took some advice and they said just ignore it because if you know you have paid, you know you did
41 not leave, you know, you did not overstay then you are fine, there is no problem. So that is what I
42 did. Maybe legally that was not the best thing to do but that was what I was advised to do. As I say I

1 paid and left on time.

2 JUDGE OBHI: Thank you very much. Is there anything else you want to say, Miss Sharma?

3 MISS SHARMA: No, ma'am, thank you.

4 APPROVED JUDGMENT

5 JUDGE OBHI: I am going to give judgment in this case. This is an application by Parking
6 Eye Limited in respect of the parking fees relating to the use of a car park managed by them in
7 Sheffield by the defendant, Mr. Heggie.

8 The claim arises from the use of the car park on the 15th April 2013. Mr. Heggie's vehicle
9 registration number M5 EVL entered the car park at Holly Street, Sheffield at 14.35, that is 2.35 p.m.
10 The vehicle left the car park at 16.39, exactly two hours and four minutes after it was parked. Mr.
11 Heggie had pre-paid for two hours worth of parking.

12 Mr. Heggie tells me that he inadvertently entered the wrong details of his car registration
13 number. He tells me that he uses that car park on several occasions. He has more than one car and
14 on this occasion entered the wrong car registration number for the car.

15 The claimant noticing that the car parked did not show the correct registration number did not
16 appear to have paid for the use of the car park issued this claim against Mr. Heggie and therefore Mr.
17 Heggie accepts that for a period of time he ignored letters that he received from the claimant. He felt
18 that he had paid for the use of the car park and did not feel that it was necessary for him to respond to
19 the correspondence. That resulted in the claimant issuing a claim in the Small Claims Court for their
20 charges. At the entrance of the car park there are a number of notices clearly displayed setting out
21 what the terms and conditions are of the use of the car park and importantly as shown as Exhibit 2 in
22 the claimant's statement is a copy of the notice that is displayed at the car park which states that this
23 is a paid parking car park, it sets out the parking tariff and says that the maximum stay of 24 hours is
24 permitted. It also says quite clearly that a failure to comply with the terms and conditions will result
25 in a £100 fine. It also says that the full correct registration should be entered into the pay and display

1 machine when a ticket is purchased.

2 Now, a strict interpretation of that does suggest to me that there was a breach of the contract
3 in that Mr. Heggie quite by mistake and I accept it was a mistake on his part, put in the wrong details.
4 He put in the details of the other car that he has used. I said to Miss Sharma at the beginning of this
5 hearing that I was however struggling to see what the loss to the claimant was and Miss Sharma has
6 made a number of representations to me which largely deal with the fact that this claim could have
7 been compromised at an earlier stage by Mr. Heggie had he communicated his defence to them at an
8 earlier stage. I have a lot of sympathy with Parking Eye for the reasons that Miss Sharma has
9 mentioned. However, despite that I am not satisfied that there was any loss to Parking Eye because
10 Mr. Heggie used the car park for two hours and four minutes, four minutes over, a period that he has
11 paid for. They may have suffered a four minutes loss but in correspondence I have seen from them
12 they clearly state that they would not normally have instigated the charge of £100 for that small
13 overstay.

14 I remind myself of the basic principles of a Civil claim and they are that the person who
15 brings the claim has to prove that they are entitled to the claim that they make and the standard of
16 proof is a balance of probabilities. In this case whilst I am satisfied that there is a technical breach of
17 the contract I am not satisfied that the claimants have suffered any loss. A car was parked and it was
18 parked for a period of time that the defendant had paid for. So on that basis I do find in favour of the
19 claimant. So I will dismiss the claim brought by Parking Eye on the basis that there was no loss
20 suffered by them.

21 Now, this is a small claim. Mr. Heggie have you any witness expenses for attending today.

22 MR. HEGGIE: Not at all.

23 JUDGE OBHI: Therefore claim dismissed and no order for costs or expenses. Thank you
24 for attending.